

Id.

III. Programs to Demolish or Renovate Residential Buildings

Since the publication of the 1990 revisions to the asbestos NESHAP, certain questions have arisen regarding whether demolitions or renovations of residential homes that are demolished or renovated by municipalities for reasons of public health, welfare or safety ("nuisance abatement demolitions") are covered by the asbestos NESHAP.² Several municipalities have stated that they believe such demolitions or renovations to be excluded from the NESHAP under the residential building exemption. Municipalities have also stated that EPA officials have been inconsistent in their determinations of this issue. In particular, officials from several municipalities in Florida have asked EPA to issue a notice clarifying EPA's interpretation of the asbestos NESHAP with regard to this issue. In addition, the House of Representatives Report accompanying H.R. 4624 (House Report 103-555, reported by the House Appropriations Committee), also noted these allegedly inconsistent interpretations and directed EPA to issue a notice of clarification that a nuisance abatement demolition or renovation does not subject an otherwise exempt structure to the asbestos NESHAP regulations. In an effort to clarify this issue for the regulated community, EPA is presenting this notice giving its interpretation of the NESHAP with regard to this issue.

IV. EPA Interpretation

EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether a municipality is an "owner or operator" for the purposes of the demolition or renovation. EPA believes that the exemption is based on the type of building being demolished or renovated and the type of demolition or renovation project that is being

undertaken, not the entity performing or controlling the demolition or renovation.

However, EPA believes that the residential building exemption does not apply where multiple (more than one) small residential buildings on the same site³ are demolished or renovated by the same owner or operator as part of the same project or where a single residential building is demolished or renovated as part of a larger project that includes demolition or renovation of non-residential buildings. The definition of facility specifically includes "any residential structure, installation or building" but excludes only "residential buildings having four or fewer dwelling units" [emphasis added]. *Id.* at 48415. Specifically not excluded from the definition of facility were residential installations. EPA believes that the fact that the residential building exemption is limited to residential buildings, and does not include residential installations, shows that the residential building exemption was not designed to exempt from the NESHAP demolitions or renovations of multiple buildings at a single site by the same owner or operator. Moreover, to the extent the regulations are ambiguous, EPA believes the language of the preamble to the 1990 regulations quoted above makes clear that the Agency interpreted the residential building exemption not to include the demolition of a group of residential buildings on the same site under the control of the same owner or operator. The preamble also notes that demolitions of residential buildings as a part of larger demolition projects (e.g. construction of a shopping mall) are not excluded from the NESHAP. EPA believes that this interpretation is consistent with the original purpose of the residential building exemption,

³The term "site" is not defined in the regulations and EPA does not intend to provide any determination of the boundaries of a "site" in today's clarification. However, to provide guidance, EPA notes that a "site" should be a relatively compact area. In EPA's view, an entire municipality, or even a neighborhood in a municipality, should not be considered a single site. Where an area is made up of multiple parcels of land owned and operated by various parties, EPA believes that parcels on the same city block may be considered as a single site. (Where a site can not be easily defined as a city block, the site should be a comparably compact site. In any event, the local government should use common sense when applying this guide.) Obviously, EPA believes that if a demolition project involves the demolition of several contiguous city blocks, the entire area could be considered a site. However, EPA believes that demolition of two individual residences separated by several city blocks should not be considered a demolition on a single site. In EPA's view, the area of a site may be larger where the area is owned and operated as a unitary area by a single owner/operator (e.g. a shopping mall or amusement park).

which was to exempt demolitions or renovations involving small amounts of asbestos. EPA does not believe the residential building exemption was designed to exempt larger demolitions or renovations on a particular site, even where small residential buildings are involved.⁴

While this notice clarifies EPA's belief that certain demolitions or renovations performed by municipalities are not subject to the asbestos NESHAP, EPA encourages municipalities (and other owners and operators) to perform such demolitions or renovations in a manner that provides appropriate consideration for any potential adverse health impacts to the public. This notice applies only to the Federal asbestos NESHAP. Other Federal, State or local agency regulations may apply.

Dated: July 17, 1995.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95-18620 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[UT22-1-6925a; FRL-5265-5]

Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City PM₁₀ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this notice, EPA is revising the PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for Ogden City, a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for PM₁₀. The redesignation is based upon violations of the PM₁₀ NAAQS which were monitored between January 1991 and January 1993.

DATES: This final rule will become effective on September 26, 1995 unless adverse comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

⁴EPA notes that 40 CFR 61.19 forbids owners and operators from attempting to circumvent any NESHAPs by carrying out an operation in a piecemeal fashion to avoid coverage by a standard that applies only to operations larger than a specified size.

²Demolition of such homes typically occur after a municipality orders a building condemned for public health or safety reasons (e.g. condemnation of a building that is abandoned and/or in danger of collapse). This type of demolition does not include demolitions of buildings for the purpose of building public facilities like highways or sports arenas.

ADDRESSES: Comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202-2466.

The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, (303) 293-1760.

SUPPLEMENTARY INFORMATION:

A. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for PM₁₀ pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), on July 14, 1994, the Administrator of EPA Region VIII requested that the Governor of Utah recommend a PM₁₀ nonattainment designation for Weber County based upon six exceedances of the 24-hour PM₁₀ NAAQS recorded between January 1991 and January 1993, ranging from 156 to 182 µg/m³. Under section 107(d)(3)(B), the Governor of Utah was required to submit to EPA the designation he considered appropriate for Weber County within 120 days after EPA's notification. The Governor submitted a response recommending redesignation of Ogden City, Utah to nonattainment on January 9, 1995. Ogden City is within Weber County, but its boundaries are not coextensive with those of Weber County.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for PM₁₀.¹ Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist

of that area violating the PM₁₀ NAAQS or contributing significantly to violations in a nearby area. Generally, the PM₁₀ nonattainment area boundaries are presumed to be, as appropriate, the county, township, or municipal subdivision in which the ambient particulate monitor recording the PM₁₀ violations is located. EPA has presumed that this would include both the area violating the PM₁₀ NAAQS and any area significantly contributing to the violations. However, a State may demonstrate that a boundary other than the county perimeter or municipal boundary may be more appropriate. Thus, in determining the appropriate boundaries for the nonattainment area, EPA has considered not only the area where the violations of the PM₁₀ NAAQS are occurring, but nearby areas which significantly contribute to such violations. Based on the information provided by the Governor, including monitoring data, EPA believes that the nonattainment boundaries submitted by the Governor are appropriate at this time.

Note: The boundaries of the nonattainment area may be adjusted as a result of analyses made during the SIP development process.

B. Background for PM₁₀

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM₁₀, that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth the regulations for implementing the revised particulate matter standards and announced EPA's State Implementation Plan (SIP) development policy, elaborating PM₁₀ control strategies necessary to assure attainment and maintenance of the PM₁₀ NAAQS (see generally 52 FR 24672). The EPA adopted a PM₁₀ SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM₁₀ NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the PM₁₀ NAAQS and whose existing SIPs most likely needed less adjustment were placed in Group II; and (3) areas with a strong likelihood of attaining the PM₁₀ NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679-24682).

At that time, Ogden City was categorized as a Group III area.

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the PM₁₀ NAAQS prior to January 1, 1989, were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for PM₁₀. All other areas of the Country, such as the Ogden City area, were similarly designated unclassifiable for PM₁₀ (see section 107(d)(4)(B)(iii) of the Act; 40 CFR 81.327 (1992) as amended by 57 FR 56762, 56772 (Nov. 30, 1992) (PM₁₀ designations for Utah).) After EPA adopted the PM₁₀ NAAQS, EPA identified and listed the Group I and Group II areas in a **Federal Register** document published on August 7, 1987, (52 FR 29383). In that document, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a **Federal Register** document dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. EPA announced all areas which were designated nonattainment by operation of law for PM₁₀ upon enactment of the 1990 Amendments in a **Federal Register** document dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up document correcting the boundaries and designations of some of the areas in light of comments received addressing the March 1991 document (see 56 FR 37654 (August 8, 1991).) Formal codification in 40 CFR part 81 of those areas designated nonattainment for PM₁₀ by operation of law upon enactment was announced in a **Federal Register** document dated November 6, 1991, (56 FR 56694). The November 6, 1991 **Federal Register** document was subsequently amended on November 30, 1992 (57 FR 56762).

II. Final Action

As noted above, pursuant to section 107(d)(3) of the Act, EPA is authorized to initiate the redesignation of areas as nonattainment for PM₁₀. Based on six exceedances of the 24-hr PM₁₀ NAAQS recorded between January 1991 and January 1993, EPA notified the Governor of Utah on July 14, 1994, that the air quality designation for Weber County should be revised from unclassifiable to nonattainment for PM₁₀ (see 40 CFR 50.6.). In response to EPA's July 14, 1994, letter, EPA received a letter dated January 9, 1995, from the Governor of Utah requesting that Ogden City, in a portion of Weber County,

¹ The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

Utah, be redesignated as nonattainment for PM₁₀. EPA is taking final action to redesignate Ogden City, Utah to nonattainment for PM₁₀.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to redesignate the area to nonattainment should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

III. Significance of This Action for Ogden City, Utah

Ogden City is being redesignated as a moderate PM₁₀ nonattainment area. Utah must submit an implementation plan to EPA for this area within 18 months after the effective date of this nonattainment redesignation. The plan must meet the requirements of Part D, Title I of the Act (see section 189(a)(2)(B) of the Act).

The Clean Air Act provides that the plan for the area must contain, among other things, the following requirements:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM₁₀ NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable;

2. Provisions to ensure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation;

3. A permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM₁₀; and

4. Quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(l), toward timely attainment.

See, e.g., sections 188(c), 189(a), 189(c) and 172(c) of the Act. EPA has issued detailed guidance on the statutory requirements applicable to moderate PM₁₀ nonattainment areas. (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).)

In taking final action to redesignate Ogden City as nonattainment, EPA is also establishing a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act (see 57 FR 13498 at 13510–13512 and 13543–13544). Section 172(b) of the Act provides that such date shall not be later than 3 years from the date of the nonattainment redesignation. The due date established for submittal of the contingency measures is 18 months from this redesignation. This due date coincides with the due date for the rest of the moderate PM₁₀ nonattainment area SIP.

VI. Other Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not in itself, impose any regulatory requirements on sources. To the extent that the State must adopt new regulations based on the area's nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

B. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments in the aggregate, or for the private sector, in any one year. Redesignation of an area to nonattainment under section 107(d)(3) of the Clean Air Act affects the air quality planning status of an area and does not, in itself, impose any regulatory requirements on sources and, therefore, does not impose any mandates or costs on the private sector. Redesignation of an area to nonattainment, however, does trigger an obligation of the State to develop, adopt and submit to EPA certain State Implementation Plan revisions under part D of title I of the Clean Air Act. EPA has determined that the cost to the State government of developing, adopting and submitting any necessary State Implementation Plan revisions will not exceed \$100 million. Thus, today's rule

is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because only the State government has to take any action as a result of today's rule.

C. Petition Language

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order 12866

The OMB has exempted this action from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Utah-PM-10 Nonattainment Areas

Dated: July 19, 1995.

Jack McGraw,
Acting Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. In § 81.345 the table for Utah-PM-10 Nonattainment Areas is amended by adding an entry for Weber County to read as follows:

§ 81.345 Utah.

* * * * *

Designated area	Designation date	Designation type	Classification date	Classification type
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Ogden Area Weber County (part) city of Ogden.	September 26, 1995	Nonattainment	September 26, 1995	Moderate.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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[FR Doc. 95-18520 Filed 7-27-95; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 82

[FRL-5266-4]

Protection of Stratospheric Ozone; Acceptable Substitutes for the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs, and regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors.

On March 18, 1994, EPA promulgated its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a

number of substitutes (59 FR 13044). In today's Notice, EPA issues decisions on the acceptability of substitutes not previously reviewed by the Agency. The intended effect of this action is to expedite movement away from ozone depleting compounds. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media sector end-use screening assessment of risks to human health and the environment.

EFFECTIVE DATE: July 28, 1995.

ADDRESSES: Information relevant to this notice is contained in Air Docket A-91-42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street SW., Washington, D.C. 20460. Telephone: (202) 260-7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeffrey Levy at (202) 233-9727 or fax (202) 233-9577, U.S. EPA, Stratospheric Protection Division, 401 M Street SW., Mail Code 6205J, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

- I. Section 612 Program
 - A. Statutory Requirements
 - B. Regulatory History
- II. Listing of Acceptable Substitutes
 - A. Refrigeration and Air Conditioning
 - B. Fire Suppression and Explosion Protection

- C. Medical Sterilants
 - III. Substitutes Pending Review
 - IV. Additional Information
- Appendix A: Summary of Acceptable and Pending Decisions

Section 612 Program

Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking**—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- **Listing of Unacceptable/Acceptable Substitutes**—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.